LOW CHEONG KIT & ORS

v.

PENTADBIRAN TANAH DAERAH WILAYAH PERSEKUTUAN KUALA LUMPUR

HIGH COURT MALAYA, KUALA LUMPUR
RK NATHAN JC
[ORIGINATING SUMMONS NO: S2-21-66-1997]
21 JANUARY 1998

LAND LAW: *Acquisition of land - Validity - Whether gazette notification had lapsed - Notification of award, Form H - Service - Whether must be served within the two-year statutory period - Whether must be served within reasonable time - Land Acquisition Act 1960, ss. 8(4), 12, 14, 16*

EVIDENCE: *Presumption - Performance of judicial and official acts - Award in respect of land acquisition - Whether properly kept in the office of Land Administrator - Evidence Act 1950, s. 114(e)*

This was an application by 20 land owners ('the plaintiffs') for a declaration that the gazette notification gazetted on 8 December 1994 pursuant to which the lands belonging to the plaintiffs were acquired had lapsed and was therefore of no effect.

It was argued by the plaintiff that pursuant to s. 8(4) of the Land Acquisition Act 1960 ('the Act') the entire acquisition process must be completed by 8 December 1996 ie, within the statutory two-year period from the date of publication in the *gazette*. Since the notification of the award of the defendant in Form H was dated 20 January 1997 and served on the plaintiffs sometime later, the plaintiff contended that the defendant had failed to comply with the said s. 8(4).

Held:

[1] Section 8(4) of the Act is clear in its intention. The declaration to acquire will lapse if no award is made under s. 14(1) of the Act, within the period of two years after the date of the publication of the declaration to acquire in the gazette. In the instant case, the gazette notification was on 8 December 1994 and the award was made on 5 December 1996 ('the said award'). In the circumstances, the defendant had clearly complied with the requirement of s. 8(4) of the Act.

[2] Since the said award emanates from the office of the Land Administrator, s. 114(e) of the Evidence Act 1950 was applicable in the present case for the court to presume that the said award had been properly kept and filed in the office of the Land Administrator pursuant to the requirement of s. 14(2) of the Act.

[3] So long as Form G was prepared within the two-year period, the service pursuant to s. 16 of the Act and pursuant to the prescribed Form H containing the extract of the written award of the Land Administrator as stated in Form G, need not be within the two-year period, but that it ought to be within a reasonable time.

[4] The service of the award by way of Form H was effected less than three months from the date the award was made. This delay of three months is a reasonable period if one considers the interpretation to be put to s. 38 of the Interpretation and General Clauses Ordinance 1948. Further, no evidence was led by the plaintiffs that within these three months the value of the land in question had risen rapidly.

[Application dismissed.]

Case(s) referred to:

Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v. Ong Gaik Kee [1983] 2 MLJ 35 ***(refd)***

Pemungut Hasil Tanah, Kuantan v. Oriental Rubber & Palmoil Sdn Bhd [1986] 1 MLJ 39 ***(refd)***

Legislation referred to:

Evidence Act 1950, s. 114(e)
Land Acquisition Act 1960, ss. 7, 8(1), (4), 10, 12, 14(1), (2), 16(1)
Interpretation And General Clauses Ordinance 1948, s. 38

For the plaintiffs - Wee Choo Keong; M/s Wee Choo Keong & Faaiz
For the defendant - YM Raja Ahmad Faridz Raja Mazlan; A-G's Chambers

Reported by Ling Hea Hoon

JUDGMENT

RK Nathan JC:

The Application

This is an application by 20 land owners for a declaration that the *gazette* notification No. 111143 dated 17 November 1994 and *gazetted* on 8 December 1994 pursuant to which lands belonging to the plaintiffs were acquired, had lapsed and is therefore of no effect as of 8 December 1996. There were other consequential prayers for declaration and costs.

Case For The Plaintiffs

The plaintiffs showed that based on s. 8(1) of the previous Land Acquisition Act 1960 there was no period of limitation as to when the land administrator must complete the acquisition process. For completeness I reproduce s. 8(1) of the old Act which reads:

> 8.(1) When the State Authority decides that any of the lands referred to in section 7 are needed for any of the purposes referred to in section 3, a declaration in Form D shall be published in the *Gazette*.

However, Mr. Wee Choo Keong for the plaintiffs referred to the amended Land Acquisition Act 1960 (the Act) wherein a new sub-s. (4) was added to s. 8. Subsection (4) was inserted by the Land Acquisition (Amendment) Act 1984 (Act A575). It reads:

> (4) A declaration under subsection (1) shall lapse and cease to be of any effect on the expiry of two years after the date of its publication in the *Gazette* in so far as it relates to any land or part of any land in respect of which the Land Administrator has not made an award under section 14(1) within the said period of two years, and, accordingly, all proceedings already taken or being taken in consequence of such declaration in respect of such land or such part of the land shall terminate and be of no effect.

The plaintiffs argued that since the *gazette* notification was 8 December 1994 then the entire acquisition process must be completed within the statutory two year period pursuant to s. 8(4) of the Act. It was the contention of the plaintiffs that since the notification of the award of the defendant as contained in Form H was dated 20 January 1997 and served on the plaintiffs sometime later the defendant had failed to comply with s. 8(4) of the Act.

Case For The Defence

The defendant submitted that so long as he had completed making the award and prepared it according to the required Form G as provided for under s. 14 of the Act, he had completed the land acquisition process and that there is no time limit for giving the award pursuant to Form H.

Court's Findings

Land may be acquired by the state authority which is defined as the ruler or the Yang Di Pertua Negeri of the state as the case may be. When the land administrator decides that lands are required for public purpose or for purpose beneficial to the economic development of Malaysia he would prepare and submit to the state authority a plan of the whole area of such lands, showing the particular lands or parts thereof which it will be necessary to acquire and he will then prepare a list of such lands in a prescribed Form C (s. 7 of the

Act). The state authority upon deciding on the lands that it requires then makes a declaration to this effect in a prescribed Form D which is then *gazetted* (s. 8).

A fresh sub-s. (4) recited *verbatim (supra)* confirms that such a declaration shall lapse and cease to be of any effect on the expiry of two years after the date of its publication in the *gazette* in so far as it relates to any land or part of a land in respect of which the land administrator has not made an award under s. 14(1) within the said period of two years. The land administrator will then commence proceedings for the acquisition of the land by giving public notice in the prescribed Form E and by fixing the date of an enquiry for the hearing of claims to compensation for all interests in such land (s. 10 of the Act). The land administrator will then, in addition to the public notice, serve copies of such notice on:

(a) the occupier of such land;

(b) the registered proprietor of such land, where he is not the occupier thereof;

(c) any person having a registered interest in such land; and

(d) any person whom he knows or has reason to believe to be interested therein.

On the date appointed, the Land Administrator will make full enquiry into the value of all scheduled lands and as soon as possible thereafter assess the amount of compensation which in his opinion is appropriate in each case (s. 12 of the Act). Section 14(1) states that upon the conclusion of the enquiry the land administrator will then prepare a written award under his hand in the prescribed Form G in which he would, in respect of each separate area of scheduled land, make a separate award in respect of each person whose interest in the land has been established in such enquiry.

Section 14(2) states:

> (2) Every award prepared under subsection (1) shall be filed in the office of the Land Administrator and shall be final and conclusive evidence of the area of any scheduled land, of its value in the opinion of the Land Administrator, and of the apportionment of the compensation awarded by the Land Administrator, whether the persons interested therein have or have not appeared at the enquiry.

On making any award under s. 14(1) the land administrator is required pursuant to s. 16(1) of the Act to prepare and serve on each person interested in such land a notice in the prescribed Form H.

Mr. Wee submitted that in the affidavit in reply filed by the defendant there is no evidence to show that the award prepared under sub-s. (1) has indeed been filed in the office of the Land Administrator. He also argued that Form H issued on 20 January 1997 has clearly been issued outside the two year period. He relied on *Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v. Ong Gaik Kee* [1983] 2 MLJ 35 to refute the defendant's argument that since Form H does not stipulate that it must be issued and served within the two year period, the service of Form H on the plaintiffs on 20 January 1997 was in order. In *Ong Gaik Kee* the flaw was in the land administrator holding an enquiry under s. 10, seven years after the declaration of acquisition which resulted in an inadequate compensation to the respondent. In fact during the time that *Ong Gaik Kee* was decided there was not in existence the amended sub-s. (4) to s. 8. Not unnaturally therefore that the then Federal Court had to rely on s. 38 of the interpretation and General Clauses Ordinance 1948 that where no time is prescribed or allowed within which anything shall be done, such thing shall be done with all convenient speed. The reliance of the plaintiffs on this case is totally flawed.

I find that s. 8(4) of the Act is expressly clear of its intention. The declaration to acquire will lapse if no award is made under s. 14(1) of the Act, within the said period of two years after the date of the publication of the declaration to acquire, in the *gazette*. The *gazette* notification was on 8 December 1994. The award was made on 5 December 1996 (exh. FBA-1 to the defendant's affidavit in reply). In the circumstances the defendant had clearly complied with the requirement of s. 8(4) of the Act.

In respect of the submission of the plaintiffs that s. 14(2) of the Act had not been complied with in that there is no mention in the affidavit in reply that the award had been filed in the office of the Land Administrator, I find this submission unacceptable. Exhibit FBA-1 is signed by the land administrator. Surely since it emanates from the office of the land administrator it must be kept and filed in his office. There can be no doubt about that. If I have to go further, I view the applicability of s. 114(e) of the Evidence Act 1950, which states that the court may presume that judicial and official acts have been regularly performed, appropriate in this instance.

Coming to the case at hand I hold that so long as Form G has been prepared within the two year period the service pursuant to s. 16 of the Act and pursuant to the prescribed Form H containing the extract of the written award of the land administrator as stated in Form G need not be within the two year period, but that it ought to be within a reasonable time. Since the award was made on 5 December 1996 and the service of the award by way of Form H which was dated 20 January 1997, was in March 1997 the service was therefore effected less than three months from the date the award was made.

I find that this delay of three months is a reasonable period if one considers the interpretation to be put to s. 38 of the interpretation and General Clauses Ordinance 1948 *(supra)*. Further no evidence was led by the plaintiffs that within these three months the value of the land in question had risen rapidly. I find support for this view in the then Supreme Court case of *Pemungut Hasil Tanah, Kuantan v. Oriental Rubber & Palmoil Sdn Bhd* [1986] 1 MLJ 39 SC wherein with a delay of 3½ years it was held that before any judge could infer that unreasonable delay had seriously prejudiced or even resulted in serious injustice to the landowner whose land had been compulsorily acquired by the authority, there must be admissible evidence to support it and that there must also be satisfactory evidence that the land value and/or prices had risen rapidly between the date of the publication of the declaration in the *gazette* and the date of the enquiry.

The plaintiffs' application is therefore dismissed with costs.